

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

V.

CRIMINAL ACTION NO: 3:10CR17WHB-LRA-001

PATRICIA ANN SULLIVAN

a/k/a Patricia Hallmon Sullivan a/k/a Patricia Odom

DEFENDANT

CURTIS FLOWERS

APPLICANT/MOVANT

APPLICATION/MOTION FOR COPIES OF ALL LETTERS SUBMITTED IN CONNECTION
WITH DEFENDANT'S SENTENCING

COMES NOW Curtis Flowers, Applicant/Movant, through counsel, and pursuant to the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, seeks an order from this Court granting him access to Attachment 1 to Document 70 in the above styled and numbered matter (presentencing letters attached to Presentence Investigation Report), as well as any other presentencing letters or other communications from any person concerning sentencing of Defendant in the instant matter submitted to, referred to or considered by the Court in connection with sentencing proceedings herein, and the right to obtain copies of same, and in support thereof would show as follows:

1. The indictment in the instant prosecution of PATRICIA ANN SULLIVAN a/k/a Patricia Hallmon Sullivan a/k/a Patricia Odom Sullivan (hereafter "Sullivan") was filed on or about February 10, 2010 alleging the commission by Sullivan of multiple violations of 26 U.S.C. § 7206(2), Assisting in the Preparation of False Tax Returns, over the period between April 2005 and February 2008. On or about September 30, 2010, Patricia Ann Sullivan Defendant a/k/a Patricia Hallmon Sullivan, a/k/a Patricia Odom (hereafter "Sullivan") was convicted after trial by jury on eight counts of Assisting in the Preparation of False Tax Returns in violation of 26 U.S.C.

§ 7206(2) under the February 17, 2010 indictment. On or about January 5, 2011 this Court held a sentencing hearing and sentenced Sullivan to a term of incarceration on those convictions. The transcript of that hearing, redacted of identifying information regarding innocent parties in accordance with local rules, is attached hereto and incorporated herein as Exhibit 1 to this Motion (hereafter “Sent. Tr.”).

2. As Exhibit 1 reveals, while Sullivan was under indictment in this matter, on or about June 18, 2010, Applicant Curtis Flowers (hereafter “Flowers”) was convicted of four counts of capital murder, and on June 19, 2010, was sentenced to death on all four of those conviction in Case No. 2003-0071-CR in Montgomery County, Mississippi. Defendant Sullivan was a material witness for the State of Mississippi against Mr. Flowers, testifying in that matter on or about June 12, 2010, during the pendency of the charges in the instant matter against Sullivan, and in five others that preceded it, including testimony given during three proceedings relevant to the Flowers prosecution occurring during the time frame covered by the indictment in the instant matter. Sent. Tr. at 54-56.¹

3. Exhibit 1 also reveals that at Sullivan’s sentencing hearing before this court, the presentencing letters sought to be disclosed were considered and made part of the Presentence Investigation Report by this Court, including but not limited to presentencing letters submitted under cover of a presentencing letter from the Doug Evans, the District Attorney for the Mississippi Fifth Circuit Court District, the prosecuting attorney in the Montgomery County prosecution of applicant. Sent. Tr. at 6. There was also allocution by Defendant Sullivan herself,

¹ Post-trial motions in the Montgomery County prosecution of Applicant, including the motion for a new trial, were finally disposed of on August 4, 2010. A notice of appeal of that matter was timely filed thereafter by Mr. Flowers, and his conviction and sentence is presently pending in Mississippi Supreme Court Case No. 2010-DP-01248-SCT on the mandatory appeal required in all cases in which a death sentence has been imposed. The record in that matter was not, however, filed with the Mississippi Supreme Court until February 14, 2012. This motion is made as soon as practical after that filing, which provided the official record of what makes access to the sentencing comment letters in Defendant Sullivan’s case necessary for the reasons stated in this motion.

and the factual statements of one of her counsel, a former assistant district attorney in Mr. Evans' office, concerning Sullivan's role as an investigative source and witness in the Montgomery County Flowers prosecutions as a factor warranting mitigation of Sullivan's sentence in the instant matter. Sent. Tr. at 54-56.

4. Mississippi recognizes the clear possibility that a witness facing his or her own criminal difficulties may be a significantly less reliable witness than one not facing such issues, and does not hesitate to ensure that any jury hearing such testimony is aware of those circumstances. Moore v. State, 787 So. 2d 1282 (Miss. 2001), McNeal v. State, 551 So. 2d 151, 158 n.2 (Miss. 1989). See also Dedeaux v. State, 87 So. 664, 665 (Miss. 1921) (citing Wilson v. State, 71 Miss. 880, 16 So. 304 (1894)). Even without an agreement, if a witness is only hoping for some sort of benefit in her own criminal problems, such hopes may serve an even greater incentive for her to have testified more favorably to the State than otherwise.²

5. The foregoing factual and legal matters raise an issue in the pending State prosecution against Flowers that may need to be litigated in the state courts relating to nondisclosure of information concerning prosecution of Sullivan in the instant matter prior to Sullivan's testimony in the pending State prosecution. These issues arise under the Sixth and Fourteenth Amendments to the United States Constitution and/or under applicable Mississippi law relating to discovery and disclosure in criminal proceedings. Disclosure of the documents

² State and federal courts recognize the importance of disclosure of this kind of information as fundamental according a criminal accused his rights to due process and to a fair trial. Bagley, 473 U.S. at 676-77 Hughes v. State, 735 So. 2d 238, 253 (Miss. 1999); Malone v. State, 486 So. 2d 367, 368 (Miss. 1986). See also Strickler v. Greene, 527 U.S. 263, 282 n. 21 (1999) ("[o]ur cases make clear that Brady's disclosure requirements extend to materials that, whatever their other characteristics, may be used to impeach a witness"); Little v. State, 736 So. 2d 486, 489 (Miss. Ct. App. 1999) (duty of State to investigate and disclose). See also Arizona v. Youngblood, 488 U.S. 51, 58 (1988)).

sought herein is required in order that Applicant Flowers and his state counsel may determine whether such issues in fact exist, and to litigate them appropriately in the event they do.³

6. All Courts must observe a heightened level of regard for the substantive and procedural rights of a capital charged individual. Woodson v. North Carolina, 428 U.S. 290, 305 (1976); Simmons v. State, 805 So.2d 452, 472 (Miss.2001). See also Caldwell v. Mississippi, 472 U.S. 320, 329-330 (1985); Lockett v. Ohio, 438 U.S. 586, 604 (1978) (“qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed”). This applies not only to matters pertaining to the sentencing phase of such proceedings, but also, under both federal and Mississippi state law, to the culpability phase as well. See Murray v. Giarrantano, 492 U.S. 1, 8-9 (1989) (citing cases pertaining to determination of guilt rather than only sentencing); Flowers v. State, 842 So.2d 531 (Miss. 2003) (reversal of earlier conviction of Applicant in same matter, citing heightened scrutiny standard and reversing conviction for numerous culpability phase errors including Batson violation by the prosecution).

7. For the foregoing reasons, Flowers respectfully that he has made a “compelling demonstration that disclosure is required to meet the ends of justice.” U.S. Dept. of Justice v. Julian, 486 U.S. 1, 13 (1988), and in particular his needs under the Fifth, Sixth and Fourteenth

³ See Kyles v. Whitley, 514 U.S. 419 (1995) ((Due process right to receive information impeaching of State’s witnesses). Chambers v. Mississippi, 410 U.S. 284 (1973) (Sixth Amendment right to confront witnesses). See also United States v. Garcia, 531 F.2d 1303, 1306-07 (5th Cir. 1976)), Blankenship v. Estelle, 545 F.2d 510, 513 (5th Cir. 1977) (specifically including information that a prosecutors’ witness has been arrested or charged in any other proceeding). See also Love v. State, 441 So. 2d 1353, 1355-57 (Miss. 1983); Little v. State, 736 So. 2d 486, 489 (Miss. Ct. App. 1999) (citing Boches v. State, 506 So. 2d 254, 263 (Miss. 1987)) Gowdy v. State, 592 So. 2d 29, 35 (Miss. 1991) In Re J.E., 726 So. 2d 547, 550 (Miss. 1998) (Mississippi constitutional law). See also Uniform Circuit and County Court Rules applicable to criminal prosecutions in the state of Mississippi. UCCCR 9.04A.6 (requiring disclosure of impeaching or exculpatory information regarding State’s witnesses), Miss. R. Evid. 608(b) (permitting impeachment by cross examination with prior conduct indicative of dishonesty other than convictions). The record in the Montgomery County prosecution of Applicant reveals that despite the foregoing law, and an order requiring provision of updated NCIC-type criminal history to the defense regarding all States’ witnesses, the existence of Sullivan’s pending federal charges or the fraudulent conduct underlying them was not disclosed to Applicant Flowers by the State of Mississippi. at any time prior to or during the June 2010 testimony of Sullivan.

Amendments to his defense of the matter in which the defendant in the instant matter was a witness. Disclosure of sentencing letters to the general public, which is not sought in the instant motion, has been approved in other prosecutions in the federal courts located in the State of Mississippi, even where the constitutional considerations pertaining to Applicant's situation exist. See, e.g., U.S. v Langston, No. 1:08-cr-00003-MPM-JAD, 2008 WL 5156625 (N.D.Miss. December 8, 2008, Order) and U.S. v. Scruggs, No. 3:07CR00192-B-A, 2008 WL 2559384 (N.D.Miss. June 23, 2008, Order)) (neither reported in F. Supp. 2nd).⁴

8. To the extent that Sullivan's privacy interests are implicated, her position as a state's witness in the state prosecution, and her claiming and making testimonial statements and offering sentencing support letters regarding that participation in mitigation of sentence for her own criminal activities, effectively waives those protections in any event.

WHEREFORE, PREMISES CONSIDERED, Applicant Curtis Flowers moves for an Order from this Court granting him access to and the right to obtain copies of Attachment 1 to Document 70 in the above styled and numbered matter (presentencing letters attached to Presentence Investigation Report), as well as any other presentencing letters or other communications from any person concerning sentencing of Defendant in the instant matter submitted to, referred to or considered by the Court in connection with sentencing proceedings herein, subject to an appropriate protective order protecting the identity of innocent parties and victims in the instant matter, if this Court finds that to be desirable.

Respectfully submitted,

CURTIS FLOWERS, Applicant/Movant

⁴ Moreover, on information and belief, the courts of the Southern District of Mississippi have, subsequent to treating those letters in Sullivan's matter as part of the non-publically available presentence investigation report, adopted a policy of treating presentencing letters like most other pleadings and documents in criminal matter and filing them in the publically available record. Disclosure of those letters to Applicant would therefore be consistent with present policy.

BY: *s/Alison Steiner*
Attorney for Applicant

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Certificate of Service

Undersigned counsel for Applicant hereby certifies that on February 22, 2012, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

David Michael Hurst, Jr., email: mike.hurst@usdoj.gov, United States Attorney;

Mark K. Horan, email: horanandhoran1@bellsouth.net, counsel for Defendant Patricia Ann Sullivan a/k/a Patricia Hallmon Sullivan a/k/a Patricia Odom Sullivan.

I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: Any of the above, if any that I receive notice from the clerk was not electronically notified.

S/Alison Steiner
Attorney for Applicant

EXHIBIT 1

TO

APPLICATION/MOTION FOR COPIES OF ALL
LETTERS SUBMITTED IN CONNECTION WITH
DEFENDANT'S SENTENCING

CRIMINAL ACTION NO: 3:01CR17WHB-LRA-001

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:10CR17WHB-LRA

PATRICIA ANN SULLIVAN A/K/A
PATRICIA HALLMON SULLIVAN
A/K/A PATRICIA ODOM

SENTENCING HEARING

BEFORE THE HONORABLE WILLIAM H. BARBOUR, JR.,
UNITED STATES DISTRICT JUDGE
JANUARY 5, 2011
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. MIKE HURST

FOR THE DEFENDANT: MR. JAMES POWELL
MR. KEVIN HORAN

REPORTED BY: CHERIE GALLASPY BOND
Registered Merit Reporter
Mississippi CSR #1012

245 E. Capitol Street, Room 120
Jackson, Mississippi 39201
(601) 965-4410

1 THE COURT: Mr. Hurst, do you have a matter for the
2 court this morning?

3 MR. HURST: Yes, Your Honor. Before the court this
4 morning is *United States v. Patricia Ann Sullivan a/k/a*
5 *Patricia Hallmon Sullivan a/k/a Patricia Odom*, criminal number
6 3:10CR17. Your Honor, we're here today for a sentencing
7 hearing, and Ms. Sullivan is represented by James Powell and
8 Kevin Horan.

9 THE COURT: Ms. Sullivan, will you stand at the
10 lectern with your attorneys, please. You are Patricia Ann
11 Sullivan?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that you're before the
14 court today for the purpose of being sentenced on the guilty
15 verdict which was returned by the jury in the trial of your
16 case on September 30, 2010?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Following that trial, I advised you that
19 between the trial verdict and the sentencing I would have a
20 presentence investigation report prepared by the probation
21 office. That report has been prepared, and I understand that a
22 copy has been made available to you and your attorneys. Is
23 that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you read the report and gone over it

1 with your attorneys?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. It's my understanding that the
4 defendant filed some corrections. As I understand it, there
5 were requests for corrections of factual matters as opposed to
6 objections to the computation of the guideline range. Is that
7 correct, Mr. Powell?

8 MR. POWELL: That's correct, Your Honor. We had some
9 additional matters concerning her medical condition I think we
10 had requested be added and also concerning the care of her
11 children that are in her home.

12 THE COURT: And have those been satisfactorily
13 addressed in the amended report?

14 MR. POWELL: They were, Your Honor.

15 THE COURT: Ms. Sullivan, do you agree with your
16 attorney that those issues have been satisfactorily amended?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I understand that the government has some
19 objection to the report and that the report has been revised, I
20 believe, to agree with the government's positions in its
21 objections. I will assume that the defendant objects to those
22 changes. Is that correct?

23 MR. POWELL: That's correct.

24 MR. HORAN: That's correct, Your Honor.

25 THE COURT: And so, Ms. Sullivan, in asking this

1 question, I'm not asking you to agree with the changes that the
2 government has asked the probation office to make and that the
3 probation office has made. I'm asking you about, in effect,
4 the original report as amended as you requested. So with that
5 explanation, do you agree that the report insofar as the
6 factual matters in it are concerned are materially true and
7 correct?

8 THE DEFENDANT: That's correct, Your Honor.

9 THE COURT: And I understand that you would have an
10 objection to changes that were requested by the government that
11 affected the computation of the guideline range.

12 THE DEFENDANT: That's correct.

13 THE COURT: All right. We'll proceed on that basis
14 then. So since the government -- since the defendant has no
15 objections to the report, I think that the government -- the
16 government should make its argument as far as what it has been
17 persuasive in getting the probation office to change, and then
18 we can come back and hear further from the defendant.

19 MR. POWELL: Your Honor, if I could, I believe in the
20 version probation office has changed, there's a paren in there
21 that says basically it's their position that the government has
22 to prove those additional matters, not -- I think that's in the
23 first part of the report.

24 MR. HORAN: It is, I believe Your Honor.

25 THE COURT: All right. I'm understanding that the

1 government is going to have the burden of proving the positions
2 that it is taking. Is that clear enough for the record to
3 protect the defendant? I'm not -- I am specifically not trying
4 to take sides with the government or to put the defendant in a
5 procedural bind here. What I'm trying to do is to leave the
6 defendant's position where she may argue against the
7 government's position before I make a ruling.

8 MR. POWELL: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. HORAN: Your Honor, if I could, I don't know -- I
11 don't know how many letters the court received on behalf -- you
12 instructed us not to get too many. I had one that was
13 presented to me today. Is it possible that I could submit it
14 to the court as well?

15 THE COURT: You may.

16 MR. HORAN: I don't know if counsel opposite needs to
17 see it or not but --

18 THE COURT: All right.

19 MR. HORAN: I'm sorry, Your Honor. It just came in
20 today. I would have sent it to the court earlier if I had had
21 it.

22 THE COURT: All right.

23 MR. HORAN: We are ready to proceed.

24 THE COURT: Let me address these letters while we are
25 dealing with them, and that will keep me from forgetting them.

1 All right. The court has received a number of letters,
2 including this one from Reverend Edward James. The court has
3 considered each of those letters. There is one that was
4 separate from a group of letters that Mr. Horan submitted by a
5 cover letter from Doug Evans, the district attorney for the
6 Fifth Circuit Court District of Mississippi. I don't know
7 whether all of the attorneys are aware of this letter also.

8 All right. I'll hand -- let me hand all of the letters that I
9 have to the attorneys, and you can review those and see what
10 they are and whether -- and that way we'll make sure that
11 you've seen all of them.

12 (Short Pause)

13 THE COURT: Mr. Hurst, the court is going to recommend
14 that we follow normal procedure and have these letters made a
15 part of the presentence investigation report. Is there any
16 objection to that from the government?

17 MR. HURST: No objection, Your Honor.

18 THE COURT: From the defendant?

19 MR. POWELL: No, Your Honor.

20 THE COURT: I'll hand them to the clerk for that
21 purpose. All right. Mr. Hurst, it's the court's understanding
22 that the government objected to the original presentence
23 report. It's my understanding -- and to save a little time,
24 I'll state what I understand your position is and then if
25 that's is not true, you can correct that and we may proceed

1 with your argument.

2 It's my understanding that you urged the position that
3 the total loss includes not only the counts of conviction but
4 also counts which were subject to trial but for which there was
5 an acquittal plus additional what you claim is relevant conduct
6 of other instances. Were those other instances actually
7 charged in the original indictment or were these instances for
8 which there was no indictment?

9 MR. HURST: You have three, I guess, types of charges
10 here. You have dismissed charges, which were indicted but were
11 dismissed right before trial, two of those.

12 THE COURT: At the urging of the government.

13 MR. HURST: Yes, Your Honor, at the urging of the
14 government. That's correct. You have the second charge, which
15 you mentioned which was the charges -- the counts on which she
16 was acquitted. So you have the acquitted charges, and then you
17 have the uncharged or unindicted conduct, which the government
18 argues and we have found multiple, multiple cases supporting
19 that all three types of these conduct fall under relevant
20 conduct under the guidelines.

21 THE COURT: All right. You have an Exhibit A attached
22 to your December 6, 2010, letter which is your objection to the
23 report. Can you advise me as to how much loss is -- how much
24 intended loss per the government is included in each of these
25 categories? In other words, on the unindicted matters, do you

1 have a total of those? Do you have a total of the acquitted,
2 and do you have a total of those that were dismissed at the
3 urging of the government?

4 MR. HURST: I can get that for you real quickly, Your
5 Honor. It will just take a few moments to calculate that up.

6 THE COURT: While you're doing that, obviously what
7 I'm looking at, if I rule against the government on any or all
8 of those categories, what happens to the total and does it
9 affect the guideline range?

10 MR. HORAN: Your Honor, we may be able to get together
11 and agree on some amounts, if we can.

12 THE COURT: Yes, sir. That would be fine.

13 MR. HORAN: Thank you. Once they get done with it.

14 THE COURT: Maybe also to save a little time, I have
15 traditionally in the past in matters where a number of charges
16 were involved but there were less than -- less than the total
17 convictions, I have held that unindicted charges should not be
18 considered relevant conduct, and I will simply -- I understand
19 the government has made that argument and has -- but the
20 government has failed before me on that argument, and I don't
21 believe there's any new law on it. I am inclined to rule that
22 the unindicted amounts should be deducted.

23 Then we get to the question of whether that's enough
24 to get it below the \$80,000 step.

25 MR. HURST: I don't believe it is, Your Honor, but I'd

1 like to object for the record because --

2 THE COURT: I'm simply advising you, and I'm going to
3 let you make your objection. I suspect I would make the same
4 ruling in regard to dismissed charges. I will make -- I will
5 make a ruling on the acquitted charges and announce that at the
6 appropriate time.

7 (Short Pause)

8 MR. HURST: Your Honor, we have finished calculating
9 those amounts and conferred with the defense and they agree
10 with these amounts. For the convicted counts, the total is
11 \$56,851. For the acquitted counts, the total is \$28,535. For
12 the uncharged and dismissed counts, the total is \$76,288.

13 THE COURT: All right. Thank you. I have read the
14 government's submission. I understand that the defendant
15 objects to the changes which increase the amount. The court is
16 going to assume that the defendant objects to the inclusion in
17 the total loss for calculation of the offense level under
18 guideline 2T4.1 as to inclusion of the amounts in the dismissed
19 counts and the acquitted counts and the unindicted counts. Is
20 that correct?

21 MR. POWELL: That is correct, Your Honor.

22 THE COURT: All right. I will allow you, if you wish,
23 to make further record, but the court has considered the
24 government's arguments. The court is going to rule that it
25 will not consider the convicted -- I will not consider the

1 amounts that would be included in the dismissed counts or in
2 the unindicted counts as relevant conduct. The court
3 understands that the government has an argument for that. The
4 court simply does not think that it has -- the court does not
5 think it is fair to sentence a defendant on charges that have
6 never been formally made against the defendant and on which the
7 court has not had an opportunity to hear evidence and make its
8 own ruling by a preponderance of the evidence as to whether
9 there is probable guilt of the defendant. Accordingly, the
10 court will not consider the amounts in the counts that were
11 dismissed nor amounts in possible counts that the government
12 never sought an indictment on.

13 That leaves the counts of conviction, which total
14 \$56,851. There -- it also leaves the section of counts for
15 which the jury returned an acquittal. The court will hear the
16 arguments of the government. You may -- first, Mr. Hurst, you
17 may formally state for the record that you object to the ruling
18 that I have made in regard to the dismissed and unindicted
19 counts. I'm not trying to block you from making a record on
20 that.

21 MR. HURST: Don't worry, Your Honor. I was going to
22 make it.

23 THE COURT: But I do not need your arguments on it
24 other than what's necessary for the record.

25 MR. HURST: Yes, Your Honor. I understand that. I

1 would like to make for the record my objection, the
2 government's objection, to the court not including uncharged
3 conduct as well as conduct that was dismissed already included
4 in the indictment. All the circuits that the government has
5 looked at all agree that relevant conduct includes uncharged
6 conduct outside the offense of conviction, including the
7 Seventh and Tenth Circuit which both agreed that uncharged tax
8 evasion is included in relevant conduct.

9 It's the government's belief that this type of
10 conduct, although not proven to a jury beyond a reasonable
11 doubt, falls within the same common plan and scheme that this
12 defendant perpetuated over a span of three or four years and
13 should be included in relevant conduct.

14 THE COURT: Do you need to make a proffer of evidence,
15 or were you planning to offer any evidence in support of your
16 position this morning?

17 MR. HURST: Yes, Your Honor. The proffer of evidence
18 would be testimony of J [REDACTED] M [REDACTED] who would testify as to
19 his three tax returns and also proffer of evidence as to the
20 revenue agents who went out and audited these individuals whose
21 tax returns were prepared by the defendant who the defendant
22 placed false Schedule A itemized deductions on those returns,
23 false Schedule C business expenses on those returns, and the
24 same type of falsities that were contained on the conduct that
25 she was convicted on. That would be the proffer of evidence by

1 the government.

2 THE COURT: All right. I'll hear the government in
3 regard to the counts for which the defendant was acquitted.

4 MR. HURST: Your Honor, similar to the uncharged
5 counts, the acquitted conduct has been held to be included in
6 relevant conduct as long as it fits the same common scheme or
7 common plan, and that was upheld in *United States v. Watts*
8 where the Supreme Court held in 1997 that that type of conduct,
9 even though not proven to -- or even though a jury did not --
10 found a reasonable doubt as to the government's case, that
11 conduct can still be considered at sentencing under the
12 preponderance of evidence standard, and the government would
13 proffer to this court that this court has heard this evidence
14 and all we would bring in today are the revenue agent to tally
15 up those numbers that the court has already heard which would
16 total the numbers that the government has already given you.

17 THE COURT: Does the government have a theory as to
18 why the jury convicted on the counts that it did and did not
19 convict on the other counts since the evidence in regard --
20 according to the court's recollection was not identical but
21 followed fairly close to the same track?

22 MR. HURST: Your Honor, we don't have a theory on that
23 matter. The only thing I would proffer to the court is that
24 the Supreme Court stated in *Watts* that an acquittal in a
25 criminal case does not preclude the government from

1 relitigating an issue when it is presented -- a subsequent
2 action governed by a lower standard of proof, which is this
3 case in sentencing.

4 THE COURT: Refresh my recollection. It's my
5 recollection that the counts of conviction involve counts in
6 which the defendant herself signed off on the e-filing and the
7 others were signed off by someone else in the office. Is that
8 anywhere close to correct?

9 MR. HURST: It's really a mixed bag, Your Honor,
10 because Counts 3 and 4 and 5 and 6 were all counts upon which
11 she was convicted, and 3 and 5 were for tax year 2005. Counts
12 4 and 6 were for tax year 2006, and that's when she worked for
13 these different companies and had different names on the tax
14 returns. So there's really no rhyme or reason if you just look
15 at the tax returns and look at where she was working as to why
16 the jury would have acquitted on other charges and still
17 convict on these charges.

18 THE COURT: All right. Anything further from the
19 government?

20 MR. HURST: Your Honor, the government also has the
21 objection as to we think inclusion of the obstruction account.
22 Obstruction of justice should be included here as well.

23 THE COURT: All right. And your argument is made in
24 regard to that in the presentence -- the probation officer
25 adopted your argument essentially in the presentence report.

1 Is that correct?

2 MR. HURST: That's correct, Your Honor.

3 THE COURT: Is there anything further you wish to
4 state in support of that position?

5 MR. HURST: Court's indulgence one second, Your Honor.

6 (Short Pause)

7 MR. HURST: No, Your Honor.

8 THE COURT: All right. Mr. Powell, you're going to
9 argue this for the defendant?

10 MR. POWELL: Yes, sir.

11 THE COURT: All right. I'll hear you on whatever
12 you'd like to say.

13 MR. POWELL: Your Honor, on the acquitted charges, my
14 understanding -- and I think that would be governed by *Apprendi*
15 *v. New Jersey*, a 2000 U.S. Supreme Court case. To the extent
16 that on the acquitted charges that they bring the offense level
17 and the potential punishment above the maximum penalty for the
18 offense, then we think that the standard is beyond a reasonable
19 doubt under *Apprendi*, that a jury has to make that
20 determination. For these acquitted charges, since they bring
21 the amount -- if you add the acquittals to the convictions,
22 it's barely over the \$80,000 limit, which knocks it another
23 notch. And if you add the obstruction of justice count, the
24 two points under that plus the two points for raising it
25 another notch, then it gets it over the 36 months which would

1 ordinarily be the maximum sentence -- as a maximum sentence in
2 this case under the guidelines.

3 And we think that based on that, that the government
4 would be required -- that those acquitted counts should be
5 excluded because there was no jury determination beyond a
6 reasonable doubt necessary to raise it above the maximum level
7 for sentencing purposes. We would also argue -- and I didn't
8 research this issue. Frankly didn't think of it until this
9 morning -- that this would also be -- there would also be a
10 double jeopardy problem with those acquitted counts in that any
11 increase in the sentencing, whether it is beyond the maximum
12 level or not, would subject the defendant to being punished
13 twice for essentially a crime that she's already been placed in
14 jeopardy of and acquitted of by the jury. Essentially those
15 would be our arguments on the counts for which he was
16 acquitted.

17 THE COURT: All right.

18 MR. POWELL: We have not gotten to the obstruction
19 charge yet.

20 THE COURT: Yes, sir. I have announced that I had
21 considered the government's argument on that as being included
22 in the presentence report, and I will consider what's in the --
23 what is in the revised presentence report as a positive
24 argument in favor of the government's position for the change.
25 So you do need to address that.

1 MR. POWELL: I do need to respond? Our response in
2 regard to that, Your Honor, would be that, first, they would
3 need to establish that by proof. Second, that the argument
4 that they have for obstruction of justice is based upon those
5 charges that they dismissed involving Mr. M[REDACTED]. And
6 based upon the court's prior ruling of not considering the
7 dismissed charges, that would allow them to get into that
8 conduct which the court has already indicated that it would not
9 consider for the total loss amount.

10 Secondly, under the sentencing guidelines, there's
11 essentially the same type of language under the tax portion --
12 if I could have just a moment, Your Honor, to find it. Under
13 2T1.4, the guideline, if it is under \$80,000 -- 30- to \$80,000
14 would be a base level of 12, and there's an additional two
15 points that are added because of the specific offense
16 characteristics under 2T1.4(b)(1), I guess.

17 THE COURT: 2T1.4?

18 MR. POWELL: I've got 2T4.1, Your Honor, is what I
19 printed out from the tax table, and the other one is -- would
20 be under that same 2T1.4(b). They added two points for --
21 because the defendant was in the business of assisting or
22 preparing tax returns, which is what's included in that. Then
23 they added -- under 2T1.9, which is entitled, "Conspiracy to
24 impede, impair, obstruct, or defeat tax, conduct was intent" --
25 they didn't ask that point, but this is the language of it.

1 "The conduct was intended to encourage persons other than or in
2 addition to coconspirators to violate the Internal Revenue
3 laws, impede, impair, obstruct, or defeat the ascertainment
4 computation assessment or collection of revenue increased by
5 two levels."

6 There's a caveat in there though that says, "Do not,
7 however, apply this adjustment if an adjustment under
8 2T1.4(b)(1) is applied, which is in the business of preparing
9 tax returns or tax preparer or aiding and assisting."

10 Essentially since they couldn't get that obstruction language
11 in, then they went to 3C, which is hard to distinguish the
12 language in the -- or that 3C1.1 and are asking that the court
13 add two points under that language for the conspiracy language.

14 So our argument against that is first that the
15 obstruction charge is part of the charges the court has already
16 said it's not going to consider because it was dismissed or for
17 the total amount because it was dismissed by the government
18 before proceeding.

19 Second, that it is -- we believe that since it wasn't
20 proper under 2T1.9, it's equally not proper -- they shouldn't
21 be allowed to just get around that and use language of another
22 section of the sentencing guidelines that says essentially the
23 same thing to impose it where they are prohibited from imposing
24 under 2T1.9.

25 We would also like to argue -- and I understand that

1 the court has adopted the presentence report -- the argument of
2 the state or is that -- as being their argument in connection
3 with this. It was our understanding of the amended presentence
4 report that that caveat where the government would have to
5 present proof as to all of those additional things for the
6 points increase, that that's something that they would have to
7 prove as well. And we would object to including it on that
8 basis.

9 THE COURT: All right. The court understands your
10 argument. I agree with you the government must present
11 evidence to support a two-level increase for obstruction of
12 justice. Insofar as your argument that there is in some way a
13 double counting or double exposure, I disagree with you. The
14 two points increase under 2T1.4(b)(1)(B), which is added under
15 paragraph 17 on page 8 of the presentence report, is clearly
16 applicable because the defendant was in the business of tax
17 return preparation.

18 The adjustment for obstruction of justice under
19 paragraph 20, which is also a two-point adjustment is based on
20 alleged lying to the revenue agent after the matter was under
21 investigation. I agree with you that there is no evidence
22 before the court at this time to support that charge -- that
23 addition for obstruction of justice. That was not a matter
24 that the court heard any proof on, I don't believe, during the
25 course of the trial. So I'll ask the government do you plan

1 to --

2 MR. HURST: Yes, Your Honor, we plan to call a
3 witness.

4 THE COURT: All right. Let's -- I think that then
5 will put me in place to rule on the obstruction of justice
6 enhancement under paragraph 2, and I think that both sides have
7 been fully heard now in regard to whether the court should or
8 should not consider the amounts under the acquitted accounts as
9 obstruction of -- as relevant conduct. I have not made a
10 ruling on that. I will make a ruling on that, but I think that
11 that now is --

12 MR. HURST: May I respond to one thing on that, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. HURST: Just to respond to the defense counsel's
16 argument, in that *Watts* case, the court said the sentencing
17 enhancements do not punish a defendant for crimes in which he
18 was not convicted but rather increase the sentence because of
19 the manner in which he committed the crime of conviction. That
20 was in response to the double jeopardy argument.

21 The defense counsel also confuses *Apprendi* where the
22 use of acquitted conduct did not increase the sentence beyond
23 the statutory maximum of the offense of conviction. Here
24 because she was convicted of eight counts with each count
25 carrying three years, her statutory maximum is 24 years not 24

1 months or 36 months. So *Apprendi* would not be applicable here.

2 THE COURT: Are you ready to proceed with your
3 evidence?

4 MR. HURST: Yes, Your Honor. The government will
5 call -- are you ready, Your Honor?

6 THE COURT: Yes, sir.

7 MR. HURST: The government will call James McWilliams
8 to the stand.

9 J. [REDACTED] M. [REDACTED],

10 Having first been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HURST:

13 Q. Would you state your name for the record.

14 A. J. [REDACTED] M. [REDACTED].

15 Q. What do you do for a living, Mr. M. [REDACTED]

16 A. I'm a truck driver.

17 Q. Do you know the defendant in this case, Patricia Sullivan?

18 A. Yes, I do.

19 Q. How do you know her?

20 A. A friend -- was a friend of family.

21 Q. And did she have an opportunity to prepare tax returns for
22 you?

23 A. Yes, she did.

24 Q. And did you always have your tax returns prepared by
25 someone?

1 A. Yes.

2 Q. You didn't prepare them yourself?

3 A. No.

4 Q. Why not?

5 A. I don't know how.

6 MR. HURST: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MR. HURST:

9 Q. I'm handing you what's been marked as Government's Exhibit
10 G-1, G-2, and G-3. Do you recognize those documents?

11 A. Yes, I do.

12 Q. How do you recognize those?

13 A. Ms. Sullivan prepared them for me.

14 Q. Those are tax returns for you?

15 A. Yes.

16 MR. HURST: Your Honor, at this time the government
17 would introduce G-1, G-2, and G-3.

18 MR. HORAN: Can we look at them just briefly, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. HURST: I'm sorry. I handed all of this to the
22 defense before we started to try to expedite this.

23 MR. POWELL: Your Honor, we would object to those
24 based upon the same objection we had to the obstruction of
25 justice count in the beginning as not being relevant or

1 applicable.

2 THE COURT: All right. Overrule the objection. G-1,
3 2, and 3 are received into evidence.

4 (Exhibit G-1, G-2, and G-3 marked)

5 BY MR. HURST:

6 Q. Mr. McWilliam, G-1, G-2, and G-3, those are your tax
7 returns for 2004, 2005, and 2006?

8 A. Yes, it is.

9 Q. And who prepared those returns for you?

10 A. Ms. Sullivan.

11 Q. And when the idea was first raised about Ms. Sullivan
12 preparing your returns, what did she tell you?

13 A. We was at my house, and my wife said that, you know, she's
14 glad when tax time come up. She said that --

15 Q. Who said?

16 A. Ms. Sullivan said that. She asked who prepared our taxes.
17 We said, "Fast Tax." She said, "Well, you don't have to go to
18 Fast Tax. I prepare taxes." I said, "Okay."

19 Q. Did she tell you about what type of refund she could get
20 you?

21 A. No.

22 Q. Did she tell you if she could get you money back or not?

23 MR. HORAN: Objection to leading, Your Honor.

24 THE COURT: Sustained.

25 BY MR. HURST:

1 Q. Now, walk us through the process for the defendant
2 preparing your taxes.

3 A. Well, she told me when I got my tax return --

4 Q. When you got your W-2?

5 A. When I got my W-2 to let her know. And her and my
6 wife stay in contact all the time. So next day she called me
7 and asked me has I received it, and I told her yeah. So she
8 came by the house and got it.

9 Q. When you say "she" --

10 A. Ms. Sullivan came by the house and got it.

11 Q. She came by the house and got your W-2.

12 A. Uh-huh.

13 Q. What happened next?

14 A. She took it to work with her.

15 Q. And then what happened after that?

16 A. I say a few days later she called me and told me that it
17 was ready, that I could come by there and get it.

18 Q. Come by where and get it?

19 A. Come by her job.

20 Q. And did you go by her job?

21 A. Yes.

22 Q. Tell us what happened there.

23 A. When I got there, I went in. I had to wait for a minute.
24 And when it was my turn, I went up there and she told me to
25 sign the document. "Sign here, sign there."

1 Q. Did you sign a lot of documents?

2 A. Yes.

3 Q. And did you read those documents you were signing?

4 A. No.

5 Q. And when you finished doing all the signing, what happened?

6 A. She gave me a check.

7 Q. Refund check?

8 A. Yes.

9 Q. Did she give you a copy of the return at that time?

10 A. No.

11 Q. What did do you after you got your refund check?

12 A. Went and cashed it.

13 Q. What happened after you cashed it?

14 A. I went by her house.

15 Q. Why?

16 A. To give her \$100.

17 Q. What was the \$100 for?

18 A. For getting me extra, for preparing it.

19 Q. And did she inform you of the amount that was being taken
20 out of the refund that you got?

21 A. No.

22 Q. Let's look at G-1 there, if you would. That's the 2004 tax
23 return. Now, on line 23 it says "educator expense." How much
24 is listed there?

25 A. 250.

1 Q. Is that true or false?

2 A. False.

3 Q. Line 26 "student loan," how much is listed there?

4 A. 2500.

5 MR. POWELL: Your Honor, we would object to this based
6 on the court's prior ruling. I mean, this is just going into a
7 litigation of what the charge may have been and has nothing to
8 do with the obstruction if she's supposed to have done
9 something to obstruct.

10 MR. HURST: Your Honor, I'm trying to establish that
11 the amounts that she prepared. And then at the end of her
12 preparation, an audit was done on these specific items on the
13 return, and I'm going show through this witness why those items
14 were false through documents that the defendant instructed to
15 be produced.

16 THE COURT: Was this one of the -- was covered by one
17 of the counts of conviction?

18 MR. HURST: No, Your Honor. This is what the court
19 said that the government had -- the court had heard none of
20 this evidence, and the government had to litigate this in front
21 of the court so the court could make a decision on this.

22 THE COURT: All right. On the obstruction of justice
23 issue --

24 MR. HURST: That's correct.

25 THE COURT: -- or on the inclusion in the table

1 amount?

2 MR. HURST: The obstruction of justice issue.

3 THE COURT: All right. Proceed. Overrule the
4 objection.

5 BY MR. HURST:

6 Q. Now, how much is listed there on line -- I believe I asked
7 you line 26 "student loan"?

8 A. 2,500.

9 Q. Is that amount correct?

10 A. No.

11 Q. What about line 27, "tuition and fees deduction"?

12 A. 4,000.

13 Q. That line correct?

14 A. No.

15 Q. Skip over to the schedule A attached to that return. It's
16 about four or five pages over. It says, "itemized deductions."

17 A. Okay.

18 Q. Now, let's walk through that. The first is "medical
19 expenses." What's listed there?

20 A. 4,433.

21 Q. Did -- is that amount correct?

22 A. No.

23 Q. What about, let's say, the interest deductions. Is there a
24 mortgage interest amount listed there?

25 A. Yes.

1 Q. Is that amount correct?

2 A. No.

3 Q. Did you even own a house in 2004?

4 A. No.

5 Q. So you didn't even have a mortgage in 2004?

6 A. No.

7 Q. What about the next expense listed? What is that?

8 A. 5,000.

9 Q. Is that gifts to charity?

10 A. Yes.

11 Q. Is that amount correct?

12 A. No.

13 Q. What about the job expenses listed there?

14 A. 7,699.

15 Q. Is that amount correct?

16 A. No.

17 Q. Now, all these amounts, did the defendant ever ask you
18 about these types of deductions?

19 A. No.

20 Q. Did the defendant ever ask you about any of these expenses?

21 A. No.

22 Q. Did you ever give the defendant any documents supporting
23 any of these expenses?

24 A. No.

25 Q. Did you ever tell the defendant to put that on your return?

1 A. No.

2 Q. Skip over to this next page, Schedule C, "Profit or Loss of
3 a Business." Is that Schedule C for you?

4 A. No.

5 Q. It says "J [REDACTED] M [REDACTED]," doesn't it?

6 A. Yes.

7 Q. And it says "P [REDACTED] A [REDACTED]" is the name of the
8 business?

9 A. Yes.

10 Q. Did you have a business in 2004 named P [REDACTED] A [REDACTED]?

11 A. No.

12 Q. What is the income listed there? I believe it's line 7.

13 A. Nothing.

14 Q. No income. What's the total amount of expenses listed
15 there, down at the bottom?

16 A. 14,075.

17 Q. So you didn't have \$14,075 worth of business expenses for
18 2004?

19 A. No.

20 Q. Did you tell the defendant to put that on your return?

21 A. No.

22 Q. Did you give the defendant any documents to support that?

23 A. No.

24 Q. And just to speed this up, Mr. M [REDACTED], G-2 and G-3 are
25 your '06 -- '05 and '06 tax returns. Is that right?

1 A. Yes.

2 Q. There are also a number of expenses on that return that you
3 did not tell the defendant to put on your return. Is that
4 right?

5 A. That's right.

6 Q. Was the process for '04 the same as for '05 and '06?

7 A. Yes.

8 Q. So she just picked up your W-2 and that was it?

9 A. That's it.

10 Q. Did you pay her cash each year?

11 A. Yes, sir.

12 Q. Who was the only person you dealt with regarding these
13 three tax returns?

14 A. Ms. Sullivan.

15 Q. Okay. Now, later on did you get a letter from the IRS
16 about an audit?

17 A. Yes.

18 Q. Tell us about that.

19 A. I had got a letter in the mail. My wife had called me at
20 work, and she told me I had got a letter from the IRS. So I
21 called the IRS from work, and she told me I had been audited.

22 Q. The IRS told you?

23 A. Yes.

24 Q. What did you do after you found out you were being audited?

25 A. Well, I called Ms. Sullivan and told her -- well, I tried

1 to contact her the next day, but it was a few days before I
2 contacted her.

3 Q. And describe that conversation with Ms. Sullivan.

4 A. When I finally got in touch with her, I told her I was
5 getting audited by the IRS and she told me to come by her
6 house.

7 Q. Okay. Did you go by her house?

8 A. Yes.

9 Q. What happened at her house?

10 A. When we got there, she told me that she was going to fix
11 it, that she had dealt with the IRS before, and the only thing
12 they needed was documents and showing that, you know -- and
13 receipts. That all she said, said she needed receipts and
14 documents.

15 Q. And did you know what she was talking about?

16 A. No.

17 Q. Had you seen a copy of your return at that point?

18 A. No.

19 Q. What -- how did she tell you to act at the audit?

20 A. She told me to let her do all the talking.

21 Q. Now, tell me about these receipts. How did they come
22 about?

23 A. She told my wife to --

24 MR. HORAN: Objection, Your Honor, unless he can
25 establish a predicate to that particular question as to what

1 she told the man's wife unless he was present during the time
2 of the conversation, which I don't believe it's been provided
3 in discovery to that effect.

4 THE COURT: All right. You may -- I'll sustain the
5 objection. You may rephrase the question.

6 BY MR. HURST:

7 Q. You've already stated to this court that receipts were
8 prepared. Is that right?

9 A. Yes.

10 Q. How were those receipts prepared?

11 A. By my wife.

12 Q. Were you present when your wife prepared those receipts?

13 A. Yes.

14 Q. And was Ms. Sullivan present?

15 A. Yes.

16 Q. What did Ms. Sullivan do when those receipts were prepared?

17 A. She told my wife how to prepare them.

18 Q. She told your wife what to put on them?

19 A. Yes.

20 Q. Now, let's talk about the morning -- where did all of this
21 occur, the creation of these receipts?

22 A. Some of them was at Ms. Sullivan's house, and the rest of
23 them was at my house.

24 Q. And the ones that were at Ms. Sullivan's house, was that
25 day or night?

1 A. It was at night.

2 Q. And tell us about the morning of the audit. What happened
3 the morning of the audit?

4 A. She came over earlier.

5 Q. Who?

6 A. Ms. Sullivan.

7 Q. Came over where?

8 A. My house earlier.

9 Q. And why?

10 A. She came over there to finish the receipts, get my wife to
11 finish the receipts and the other documents.

12 Q. Was that done?

13 A. Yes.

14 Q. At whose instruction?

15 A. Hers.

16 Q. Who is her?

17 A. Ms. Sullivan.

18 Q. Now, that first audit occurred on October 30th, 2006. Is
19 that right?

20 A. Yes.

21 Q. And who was present at that audit?

22 A. Me, my wife, Ms. Sullivan and --

23 Q. Was it Marcie Riley Jones?

24 A. Yes.

25 Q. May have been just Marcie Riley at the time.

1 A. Yes.

2 Q. And tell us how that meeting began.

3 A. Ms. Riley started to talk, and she was asking me some
4 questions, and Ms. Sullivan said she was going to do all the
5 talking.

6 Q. And what happened next?

7 A. Ms. Riley did a paper to release so Ms. Sullivan can sign
8 and do all the talking.

9 Q. So power of attorney?

10 A. Yes.

11 MR. HURST: Your Honor, may I approach?

12 THE COURT: Yes, sir.

13 BY MR. HURST:

14 Q. I'm handing you what's been marked as G-4. Do you
15 recognize that document?

16 A. Yes.

17 Q. Is that the power of attorney you just mentioned?

18 A. Yes.

19 MR. HURST: Your Honor, would he move to admit G-4
20 into evidence.

21 THE COURT: G-4 will be received into evidence.

22 (Exhibit G-4 marked)

23 BY MR. HURST:

24 Q. That document is a power of attorney. Is that correct?

25 A. Yes.

1 Q. Who filled out that document?

2 A. Ms. Sullivan.

3 Q. And the second page, is your signature on that?

4 A. Yes.

5 Q. And whose signature is on the bottom of that document?

6 A. Ms. Sullivan.

7 Q. And she lists there a "b" for a certified public
8 accountant. Is that right?

9 A. Yes.

10 Q. Now, after that first audit were any of these records or
11 receipts exchanged?

12 A. No.

13 Q. Let's talk about the second audit. That occurred on
14 November 20, 2006. Is that right?

15 A. Yes.

16 Q. At this audit, were there receipts given to Ms. Riley?

17 A. Yes.

18 MR. HURST: Your Honor, may I approach?

19 THE COURT: Yes, sir.

20 BY MR. HURST:

21 Q. I'm handing you what's been marked as Government's Exhibit
22 G-5. Do you recognize that those documents?

23 A. Yes.

24 Q. How do you recognize those documents?

25 A. These are the receipts that she had my wife to finish up at

1 our house.

2 MR. HURST: Your Honor, at this time, the government
3 would move in G-5 into evidence.

4 THE COURT: G-5 will be received into evidence.

5 (Exhibit G-5 marked)

6 MR. POWELL: Is that the whole series?

7 MR. HURST: Yes, the whole series.

8 MR. POWELL: All right.

9 BY MR. HURST:

10 Q. Let's talk about these documents, Mr. M [REDACTED]. The
11 first 8 pages appear to be an invoice. Is that right?

12 A. Yes.

13 Q. And if you could count off the numbers at the top of those
14 invoices for the record, and you can just use the last two
15 digits.

16 A. 03, 04, 05, 06, 07, 09, and 10.

17 Q. These are all in order. Is that right?

18 A. Yes.

19 Q. And these are all different receipts. Is that correct?

20 A. Yes.

21 Q. And these -- and you were there when these were created.
22 Is that right?

23 A. Yes, sir.

24 Q. Did they come from different books or all the same book?

25 A. The same.

1 Q. And this is one of the records that was created by your
2 wife at the behest of the defendant?

3 A. Yes.

4 MR. HURST: Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. HURST:

7 Q. The next two pages, Mr. M [REDACTED], these are receipts from
8 G [REDACTED] S [REDACTED]. Is that right?

9 A. Yes.

10 Q. Let me ask you, I forgot, the first eight pages, were all
11 of those receipts false?

12 A. Yes.

13 Q. These two pages, G [REDACTED] S [REDACTED] showing you giving money to
14 G [REDACTED] S [REDACTED], who created these documents?

15 A. My wife and Ms. Sullivan.

16 Q. Are these documents false?

17 A. Yes.

18 Q. The next two pages, receipts from a church, who created
19 these two documents?

20 A. My wife and Ms. Sullivan.

21 Q. Are these documents false?

22 A. Yes.

23 Q. The next receipt is a college receipt. Who created this
24 document?

25 A. My wife and Ms. Sullivan.

1 Q. Is this documents false?

2 A. Yes.

3 Q. The final page in that stack is a letter from M [REDACTED]

4 W [REDACTED]. Who created that document?

5 A. My wife and Ms. Sullivan.

6 Q. And is that document false?

7 A. Yes.

8 Q. And all these documents, these records, these receipts,
9 were all created for what reason?

10 A. To give to the IRS to the -- to the IRS agent that was
11 coming.

12 MR. HURST: Court's indulgence just one second.

13 (Short Pause)

14 MR. HURST: Your Honor, the government would tender
15 the witness.

16 CROSS-EXAMINATION

17 BY MR. POWELL:

18 Q. Mr. M [REDACTED], your first interview with Marcie Riley was
19 when?

20 A. On the 31st.

21 Q. Of what month? Let me ask you this: Did you meet with her
22 on October 30th of 2006?

23 A. Yes.

24 Q. Was that your first meeting with Ms. Riley?

25 A. Yes, sir.

1 Q. And is that the date that you gave her those receipts, or
2 was that on the second meeting?

3 A. It was on the second meeting.

4 Q. All right. Now, when those receipts were prepared, do you
5 recall ever telling Ms. Riley or Agent Wallace -- you know
6 Agent Wallace. Right? --

7 A. Yes.

8 Q. -- that Ms. Sullivan had prepared those receipts?

9 A. She didn't ask.

10 Q. Do you know -- at any time did you tell her that she had
11 prepared those receipts or your wife tell her that?

12 A. She didn't ask.

13 Q. Did you know that she was made to undergo some handwriting
14 exemplars in connection with those receipts?

15 A. No, I did not.

16 Q. When was it that you told her that your wife actually
17 prepared the receipts?

18 A. It was at the last meeting.

19 Q. And these people that are on there at the first -- at the
20 meeting in October where the receipts were prepared, in fact,
21 Ms. Sullivan was there to represent you. That was in November
22 of 2006. Right?

23 A. Yes.

24 Q. Ms. Sullivan was there under this power of attorney, I
25 guess, that you had signed earlier. Right?

1 A. Yes.

2 Q. Those receipts during that period of time that they were
3 being given to Ms. Riley, at any point did you ever state that
4 the receipts were not valid?

5 A. No.

6 Q. When revenue agent Riley asked for the receipt that's in
7 there on the tuition expense, didn't you tell her that -- you
8 tell her that, "A friend got that faxed for me. I'll have to
9 get it from him"?

10 A. If I can recall, I probably did.

11 Q. So you told Agent Riley that you had obtained that receipt
12 through a friend of yours who had it faxed from you from this
13 institution.

14 A. I can't remember. I probably did.

15 Q. So if the -- you told her also that the schools out in
16 California somewhere, they just came down here on the coast to
17 teach school. Do you remember telling her that?

18 A. I remember that.

19 Q. So during the course of this interview with Ms. Riley, in
20 fact, you were answering questions about these particular
21 documents that were being provided, weren't you?

22 A. That last one you said.

23 Q. And as far as buying the receipts from the book, your wife
24 did that .

25 A. Yes.

1 Q. As far as filling out the receipts, your wife did that.

2 A. Under Ms. Sullivan's instruction, yes.

3 Q. Well, Ms. Sullivan didn't sign or fill out or purchase the
4 receipts or obtain any information from those receipts, did
5 she?

6 A. No.

7 Q. And as far as the names that are -- the receipts that are
8 contained on there, the church that you go to, [REDACTED] -- that
9 is the church that you go to where some of these receipts came
10 from. Right?

11 A. Yes.

12 Q. The name that's on the document reflecting your donation,
13 that's an actual person at your church. Right? Sister [REDACTED]
14 [REDACTED] is what it looks like.

15 A. No.

16 Q. It's not?

17 A. No.

18 Q. That phone number that's in there, is that a valid number
19 for the church or for --

20 A. No, I don't think it is.

21 Q. Is [REDACTED] -- let's see. [REDACTED]: Was he your pastor?

22 A. Yes, he's the pastor.

23 Q. So this is -- this is official church letterhead from the
24 church that you go to. Right?

25 A. I'm going to say I'm not sure.

1 Q. Where did the letterhead come from?

2 A. Like I said, she and my wife made it up so --

3 Q. Well, your wife would have known this information, wouldn't
4 she? You and she go to the same church?

5 A. Yes.

6 Q. So she would have known the information.

7 A. Most of it.

8 Q. As far as who the pastor was and who the financial
9 secretary was, who the clerk, administrative assistant was, all
10 this stuff was contained on the letterhead. That would be
11 information that was peculiar to your wife, wouldn't it?

12 A. I know that [REDACTED] don't go to that church at all.

13 Q. Well, the minister is [REDACTED], a deacon that's
14 listed on the letterhead?

15 A. [REDACTED].

16 Q. [REDACTED], the clerk or administrative assistant. You
17 don't know any of those folks?

18 A. No.

19 Q. You just know that [REDACTED] is
20 your church. Is it located at [REDACTED]
21 in Jackson?

22 A. Yes.

23 Q. The name that's signed on the document from the [REDACTED]

24 [REDACTED] that's

25 shown, [REDACTED], your wife prepared that signature. Right? That's

1 her signature on there. Your wife signed [REDACTED] name.

2 A. I don't know. I wasn't standing around.

3 Q. Well, your wife went out and bought receipts. When
4 Ms. Sullivan came there, did she bring a typewriter and a
5 computer in order to fabricate documents when she came to your
6 house?

7 A. No.

8 Q. So all of the fabrication of documents that were done were
9 done by your wife in some manner, weren't they?

10 A. I suppose.

11 Q. Do you know a [REDACTED]? Is that a real person?

12 A. [REDACTED]?

13 Q. Yeah. That's somebody you know?

14 A. Yes.

15 Q. And what you're saying is this person that you know that
16 Ms. Sullivan told your wife to use this person that you know,
17 not that she knows, to fabricate a document saying that he
18 did -- helped you with automotive work on his car back in 2004?

19 A. Yes.

20 Q. That's what you're telling the court?

21 A. Yes.

22 Q. Is that his phone number on there, that [REDACTED] [REDACTED]?

23 A. No.

24 Q. But that's a person that you know, not that she knows.
25 Right?

1 A. She met him one time.

2 Q. And has he, in fact, ever worked with you?

3 A. No.

4 Q. This donor card that's in there where supposedly there was
5 a \$215 donation made by you, where is that a donor card to?

6 A. What donor card?

7 Q. That card.

8 A. Repeat your question.

9 Q. Do you recognize the card?

10 A. I recognize this one.

11 Q. Where did that particular document come from?

12 A. I didn't make it up.

13 Q. Well, it's got your signature on it, J [REDACTED] M [REDACTED].

14 Is that your signature?

15 A. Yeah, after I signed it.

16 Q. So you signed it in January of 2004. At least that's the
17 date that's on it. Right?

18 A. Yeah.

19 Q. Who filled out this top part where your name is printed,

20 J [REDACTED], M [REDACTED], [REDACTED].

21 A. I guess her and my wife did it.

22 Q. Okay. So none of that is your printing?

23 A. No.

24 Q. All right. There are actually two of those cards. One of
25 them says \$375 and the other one says 215. Do you see both of

1 those? You signed both of those?

2 A. Yes.

3 Q. So when you say your wife and her made them all up or your
4 wife did at your direction, you didn't tell us anything about
5 you signing these things at Ms. Sullivan's direction. Did you
6 do that too?

7 A. Yes.

8 Q. So in addition -- so now in addition to directing Ms.
9 Sullivan -- Ms. Sullivan directing your wife on what to do,
10 she's also directing you about what to do as far as signing
11 cards. Right?

12 A. Yes.

13 Q. And do you have any idea of where she may have come up with
14 this particular document reflecting the donations?

15 A. No.

16 Q. So those two receipts for 375 and \$215, those are supposed
17 to be from [REDACTED] on [REDACTED] Street. Do you remember
18 telling Agent Wallace and Revenue Agent Riley that, in fact,
19 you provided those two receipts?

20 A. No, I can't recall.

21 Q. Would you have any idea why the report that they rendered
22 would reflect that you told them that?

23 MR. HURST: Objection, Your Honor. He's already
24 answered that he can't recall.

25 THE COURT: Overruled.

1 BY MR. POWELL:

2 Q. Did you provide those receipts for the purpose of this
3 audit?

4 A. No, I didn't.

5 Q. Not withstand what the reports may reflect, did you also
6 tell the revenue agents that the receipts from [REDACTED] Church
7 were created on a computer at your house by your wife?

8 A. Yes.

9 Q. So all of the documents then, other than the receipts which
10 you claim that you told Ms. -- that Ms. Sullivan told your wife
11 to buy and she bought all of these documents, were actually
12 provided either by you in your statement to Ms. Williams or to
13 the revenue agents or created on your computer at your home.

14 A. That was created on my computer.

15 Q. So the only thing that -- and again, Ms. Sullivan, didn't
16 go and find any receipts. Your wife did that.

17 A. Yes. Under her instruction.

18 Q. So the only thing we have is a year after the fact when the
19 revenue agents come to you and tell you that they are
20 investigating Patricia Sullivan. At that time you blamed
21 everything on Patricia Sullivan. Right?

22 A. No.

23 Q. Well, you didn't -- you didn't tell them that there was
24 anything false when you submitted those documents, most of
25 which were actually prepared by you or your wife. Right? In

1 fact, all which have were prepared by you or your wife.

2 A. No.

3 Q. You didn't tell them any of that stuff the first time, did
4 you?

5 A. She didn't ask.

6 Q. Okay. And you claim that you didn't know any of the items
7 that had been put down on your tax return. Why then were you
8 out providing receipts to [REDACTED] and having your wife
9 create false stationery on your computer and you signing those
10 documents?

11 A. Because Ms. Sullivan asked us to.

12 Q. Because she asked you to?

13 A. Yes.

14 Q. Okay. All of that -- but all that information is on those
15 documents. Ms. Sullivan wouldn't have known that information.
16 You and your wife would have known that information, wouldn't
17 you, Mr. M [REDACTED]?

18 A. No.

19 Q. Okay.

20 MR. POWELL: If could I have just a moment, Your
21 Honor.

22 (Short Pause)

23 BY MR. POWELL:

24 Q. Were you present at any time when your wife told the agents
25 that the documents were prepared by Patricia?

1 A. Yes.

2 Q. When did she change her story to say that they were
3 prepared by Patricia and, in fact, admitted that she prepared
4 them but supposedly at Patricia's direction?

5 A. Say that again.

6 Q. Well, when did her story change from that Patricia prepared
7 them but she prepared them but at Patricia's direction?

8 A. It never changed.

9 Q. When was it that she told them that Patricia prepared the
10 documents, then?

11 A. At the last meeting.

12 Q. Did Patricia ever prepare any documents?

13 A. The documents that I'm holding right here.

14 Q. Well, in fact, your wife prepared all of those or you
15 prepared them, didn't you? Are you talking about the tax
16 returns?

17 A. Yes.

18 Q. So those are the only documents that Patricia ever
19 prepared.

20 A. And she instructed us to prepare these other ones.

21 MR. POWELL: Tender the witness, Your Honor.

22 THE COURT: Mr. Hurst, any redirect?

23 MR. HURST: Just a few, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. HURST:

1 Q. Mr. M [REDACTED], when was the first time you saw your
2 returns?

3 A. Before the 31st?

4 Q. Right, before the audit.

5 A. Yes.

6 Q. Who was the only person that knew what was on your returns
7 before the audit?

8 A. Ms. Sullivan.

9 Q. You didn't know what was on your returns before the audit,
10 did you?

11 A. No.

12 Q. Now, you told Mr. Powell that you told the agents that --
13 about this college in California. Who told you to say that?

14 A. Ms. Sullivan.

15 Q. And that your wife bought this receipt book?

16 A. Ms. Sullivan.

17 Q. Who told your wife to buy the receipt book?

18 A. Ms. Sullivan. She told her that that night when we left
19 from her house.

20 Q. Who told your wife to fill out these receipts?

21 A. Ms. Sullivan.

22 Q. And you said you signed those Good Samaritan documents?

23 A. Yes.

24 Q. Who told you to sign them?

25 A. Ms. Sullivan.

1 Q. Who did you rely on? Who did you trust to prepare your
2 taxes?

3 A. Ms. Sullivan.

4 MR. HURST: No further questions, Your Honor.

5 THE COURT: All right. You may step down. Is this
6 witness finally excused?

7 MR. HURST: Finally excused, Your Honor.

8 THE COURT: All right.

9 MR. HURST: The government rests, Your Honor.

10 THE COURT: All right. Does the defendant have any
11 evidence to offer?

12 MR. POWELL: Your Honor, we don't have any evidence at
13 this time. We don't believe that the state has established by
14 any standard a preponderance of conspiracy. In the interest of
15 Mr. [REDACTED] testimony and the changes in his testimony, we
16 ask that you dismiss the obstruction portion of the
17 enhancement.

18 THE COURT: All right. I think that -- yes, sir.
19 Anything further, Mr. Hurst?

20 MR. HURST: I would just like to point out to the
21 court for the record *United States v. Powell*, a Fifth Circuit
22 1997 case, 124 F.3d 655 where the court upheld an obstruction
23 enhancement for the defendant for making false statements to an
24 IRS auditor and submitting false documents during an IRS audit.
25 Thank you.

1 THE COURT: All right. The court is going to rule
2 that the counts of acquittal and the amounts thereunder are
3 relevant conduct. The court heard the evidence in the trial.
4 The evidence in those counts was compelling to the court, and
5 the court was surprised that the jury acquitted the defendant
6 as to any counts. In effect, the evidence was almost identical
7 except obviously for the amount of -- the amounts in the
8 returns and the taxpayers. But the scheme was the same in all
9 of the counts, and the court finds that the defendant engaged
10 in the same conduct in regard to the acquitted accounts that
11 she did insofar as the counts of acquittal. The court makes
12 this finding by a preponderance of the evidence and, in fact,
13 would probably make a like finding if the burden on the
14 government were a stronger evidence -- evidentiary matter such
15 as under fraud.

16 Accordingly, the amount of the tax loss contained in
17 the counts of acquittal will be included for the computation of
18 the base offense level of 2T4.1(f). The counts of conviction
19 totaled \$56,851. The counts of acquittal totaled \$28,535. The
20 total of those two then is 85,386. The bottom of the range for
21 a level 16 is \$80,000 so that it's clear that that figure is
22 there.

23 The court has decided not to consider the amounts of
24 the -- included in the dismissed or unindicted account --
25 amounts. Those totaled \$76,288. The court notes that if those

1 were added to the \$85,386 total that the amount would not be
2 more than \$200,000 so that under any event, even if the court
3 were in error in regard to that ruling, the offense level would
4 not change. It would remain at 16.

5 In regard to the obstruction or impeding the
6 administration of justice, the court finds that the government
7 has proved by a preponderance of the evidence that the
8 defendant, Patricia Sullivan, after the audit was announced
9 instructed and worked with the taxpayers, J [REDACTED] M [REDACTED] and
10 his wife, to provide fraudulent receipts and other
11 substantiations for the fraudulent items contained in the tax
12 return and, therefore, a two-level increase under 3C1.1 is
13 justified.

14 The applicable note number 1, second paragraph,
15 states, "Obstructed conduct that occurred prior to the start of
16 the investigation of the instant offense of conviction may be
17 covered by this guideline if the conduct was purposefully
18 calculated and likely to thwart the investigation or
19 prosecution of the offense of conviction." Here it can be
20 argued that the conduct occurred prior to the start of the
21 investigation if that, in fact, was the date of the first
22 audit. The court thinks that this is applicable.

23 In Commentary Application Note 4, there are examples
24 of covered conduct. Subparagraph B states, "Committing,
25 suborning, or attempting to suborn perjury during the course of

1 a civil proceeding if such perjury pertains to conduct that
2 forms the basis of the offense of conviction" -- I'm going to
3 retract that. I read that improperly. However, examples of
4 covered conduct, C seems to apply, "producing or attempting to
5 produce a false, altered, or counterfeit document or record
6 during an official investigation or judicial proceeding." Here
7 there was an official IRS investigation for which these false
8 documents were presented. Accordingly, the court finds that
9 the defendant's objection to the two-level enhancement for
10 obstruction of justice is not proper.

11 The end result of the hearings this morning and of the
12 objections -- of the objections by the defendant is that the
13 court finds that the calculation of the total offense level as
14 contained in the presentence investigation report, paragraphs
15 16 of through 25, is properly computed and that the total
16 offense level shown there in line 25 at 20 is the proper total
17 offense level to use in this case. This combined with the
18 defendant's criminal history category of 1 produces a guideline
19 imprisonment range of 33 to 36 months as to each count.

20 All right. Is that correct?

21 MR. HURST: I had 33 to 41 months.

22 THE COURT: I think that's right. 33 to 41 months.

23 MR. POWELL: Yes, sir.

24 THE COURT: All right. Let me clarify now. Is the
25 record -- does the government have anything further for the

1 record at this stage?

2 MR. HURST: No, Your Honor.

3 THE COURT: Does the defendant have anything further
4 at this stage?

5 MR. POWELL: Your Honor, the only thing we just want
6 to make sure the record reflects that the obstruction
7 enhancement portion involved a count of the indictment that it
8 was either dismissed or unindicted.

9 THE COURT: All right. Thank you, sir. All right.
10 At this time, I'll ask if the government -- whether the
11 government has a recommendation as to sentencing.

12 MR. HURST: Yes, Your Honor. The government would
13 recommend that the defendant be sentenced to the full 41 months
14 of imprisonment based on the number of years that she concocted
15 this scheme and executed this scheme and the number of
16 taxpayers and over \$160,00 in the government's view. We think
17 that's a more than fair type of sentence for this type of
18 stealing from the American taxpayers.

19 THE COURT: Is there a cap on sentencing at 36 months
20 for each count?

21 MR. HURST: For each count, Your Honor, which
22 cumulatively is 24 years.

23 THE COURT: Your recommendation is to sentence the
24 defendant to enough consecutive sentence to sentence her to 41
25 months?

1 MR. HURST: Yes, Your Honor. That's correct.

2 THE COURT: All right. Thank you. All right.

3 Ms. Sullivan, at this time I will give you what is known as the
4 right of allocution. You have a right to address the court on
5 anything that you think might be appropriate to the court's
6 consideration of a sentence in this case. You may speak
7 directly to the court. You may have your attorneys speak for
8 you. If all of you want to speak, I will hear from all of you.
9 You may -- come stand at -- Ms. Sullivan, if you'll come stand
10 at the lectern, please.

11 THE DEFENDANT: To the court, to the Honorable Judge
12 Barbour, I have always tried to be a law-abiding citizen.
13 That's why I willfully showed up on six separate occasions to
14 testify in the Flowers murder trial. I worked in the tax
15 preparation business because my health and my family
16 obligations wouldn't allow me to work on a full-time year-round
17 basis.

18 As a tax preparer, I could take my disabled son to
19 work with me during the months of the tax season. It is
20 obvious from my financial status that I never made an excessive
21 amount of income from my tax preparation work. I did that job
22 for the sole purpose of supplementing my income so I could take
23 care of my family.

24 The small amount of money I was able to raise by
25 pawning my personal property or obtaining loans on my vehicles

1 went to pay my legal expenses in this trial. I'm currently
2 four months behind on my mortgage and cannot afford to pay the
3 notes on my vehicle that I use to get around. I am sorry for
4 any losses that I may have caused as a result of my working in
5 tax preparation field. I hope that the court can see that I'm
6 not a bad person and will impose a sentence which will allow me
7 to continue to care for my children. I am not asking the court
8 to feel sorry for me, but I am asking the court to be merciful.
9 Thank you.

10 THE COURT: All right. Mr. Horan or Mr. Powell,
11 anything you'd like to say?

12 MR. HORAN: Your Honor, I feel compelled to say
13 something on behalf of Patricia. When I was in the DA's office
14 and this Flowers murder case -- the murder occurred in Winona.
15 I was an assistant district attorney. The first person that
16 came forward on behalf of the state or gave any information
17 that led to the eventual conviction of Mr. Flowers was this
18 lady right here. First time I saw her was in October of 1997
19 at a time when it was a very volatile situation in Montgomery
20 county area involving this case. And she came to us when I was
21 working in the DA's office at great peril to herself, and she
22 did that, and she consistently testified on six separate
23 occasions three times for me when I was an assistant district
24 attorney.

25 She has been ridiculed by certain members of the

1 community up there for doing that, but she held fast, Your
2 Honor, and she did something that I think warrants some
3 consideration from this court in her assistance to the state of
4 Mississippi, not only during the course of the trial but during
5 the course of the investigation, Your Honor. That's all I have
6 to say.

7 THE COURT: Mr. Powell?

8 MR. POWELL: Your Honor, I just ask that the court
9 consider because of her family obligations and her health some
10 form of supervised release for Ms. Sullivan. Basically she is
11 in a status where she's completely in poverty at this time.
12 She has a disabled son that although he is an adult, he does go
13 with her to work. Every time she's come to see us at our
14 office, he's been there with her. There's just nobody else
15 that's able to supervise him other than her. So a sentence of
16 imprisonment for her is also a sentence to that young man, and
17 we would just ask the court to be merciful in that regard, Your
18 Honor.

19 MR. HORAN: Your Honor, I would like to also say I was
20 shocked to hear Mr. Hurst make the recommendation of 41 months
21 which just recently in the Southern District tax evasion case
22 involving almost \$6 million got less than a 30-month sentence.
23 I felt like under the circumstances with the benefit this young
24 lady as the evidence in the proof that was submitted at trial
25 was less than \$2,500, Your Honor. I feel like under the

1 circumstances that -- I'm asking the court to go outside the
2 guideline range. I don't know if the court's compelled to do
3 so. I think going below the guideline range would be something
4 appropriate under the circumstances, Your Honor.

5 THE COURT: All right. Patricia Ann Sullivan, the
6 court has considered the presentence investigation report, the
7 advisory guideline computations, the sentencing factors under
8 18 United States Code, Section 3553(a), the recommendation of
9 the government and the statements made by way of allocution by
10 yourself and by Mr. Horan and Mr. Powell, your attorneys.

11 It is the judgment of the court that the defendant,
12 Patricia Ann Sullivan, be sentenced to serve a term of 36
13 months of imprisonment on each count to run concurrently in the
14 custody of the United States Bureau of Prisons. The term of
15 imprisonment shall be immediately followed by a one-year term
16 of supervised release for each count to run concurrently
17 subject to the standard and mandatory conditions as listed on
18 the judgment order in addition to the following special
19 condition: The defendant is to provide any financial
20 information, business or personal, to the United States
21 Probation Office upon request.

22 No fine is ordered. It is ordered that the defendant
23 pay a special assessment fee of \$100 per count for a total of
24 \$800, which is due immediately.

25 PROBATION OFFICER: May I make a recommendation, Your

1 Honor?

2 THE COURT: Yes.

3 PROBATION OFFICER: This defendant has no known
4 history of substance abuse. Would the mandatory drug testing
5 during supervised release be waived?

6 THE COURT: I assume the defendant has no objection to
7 that.

8 MR. HORAN: None, Your Honor.

9 THE COURT: Drug testing will be waived as recommended
10 by the probation officer. Ms. Sullivan, I don't know whether
11 you've discussed with your attorneys. I have the option of
12 ordering you into custody immediately to start serving your
13 term. I can also allow you to self-report to the prison to
14 which you are assigned. There is no woman's prison in
15 Mississippi so that you will be assigned outside of this state,
16 maybe Louisiana or Alabama or Florida.

17 I can let you self-report. Usually it takes about six
18 weeks for the Bureau of Prisons to make a prison assignment.
19 If you choose not to self-report and begin serving your
20 sentence today, you'll be held in a local facility until an
21 assignment is made. That would probably be up at Grenada. If
22 you want to self-report, you will have to bear the expense of
23 your travel and have somebody take you to the prison, which
24 will be out of state, at your own expense.

25 There is an alternative to that. We can let you

1 surrender to the United States Marshal in Jackson on a
2 particular date. If you do that, then the Marshal Service will
3 hold you locally until arrangements could be made for your
4 transportation to the federal facility. Have you discussed
5 these things with your attorneys?

6 MR. HORAN: Some time ago we discussed it, not
7 recently. But I think Ms. Sullivan is going to opt to
8 self-report, and we'll make sure that she gets to the facility
9 as designated, Your Honor.

10 THE COURT: All right. Mr. Hurst, is there any
11 objection from the government?

12 MR. HURST: No, Your Honor. No objection to
13 self-reporting.

14 THE COURT: The defendant is to voluntarily surrender
15 to the institution designated by the United States Bureau of
16 Prisons for service of the sentence imposed by 10 a.m. on
17 Tuesday, February 15, 2011. That is -- Monday is Veterans Day.
18 That's the day after a holiday so someone won't have to take
19 two days off to transport her.

20 MR. HORAN: If she haven't designated a facility, Your
21 Honor, what steps -- do I need to notify the court or probation
22 services? I've had some confusion in the past.

23 THE COURT: Of what?

24 MR. HORAN: If the facility hasn't been designated by
25 the 15th. You said she was to self-report to the designated

1 facility.

2 THE COURT: You need to let -- why don't you let the
3 probation office know. Bureau of Prisons will notify you -- is
4 six weeks long enough now?

5 DEPUTY MARSHAL: Generally it might take a little bit
6 longer, but in some cases it might be within six weeks or less.
7 So I think that's an appropriate amount of time.

8 THE COURT: My intention is that she self-report. And
9 if a facility is not designated at -- by the 15th of February,
10 then she should remain in the same status and self-report when
11 one is designated.

12 MR. HORAN: Thank you, Your Honor.

13 THE COURT: All right. Ms. Sullivan, I read the
14 letters. I read the presentence report. Other than this
15 completely unexplainable behavior of preparing these false tax
16 returns for people, I don't know why you did it. It doesn't
17 seem within your character. It doesn't seem within what your
18 obligations to your family are and your recognition of those
19 obligations.

20 Why you would stick your neck out for refunds for
21 these people -- and I understand your argument -- for a small
22 amount of preparation fee. I don't know. You did it, however.
23 The loss to the government has been substantial, but there are
24 also other victims of the crime who are the taxpayers who
25 trusted in you. They got refunds, but they did not know that

1 they were improper refunds and now they are having to pay those
2 refunds back because of what you did.

3 I cannot simply say that you've got a son who is in a
4 state where he needs you. You should have recognized that
5 before you ever committed any kind of crime. I hope that
6 somebody will be able to take care of him, his brother or his
7 sister. I hope your daughter is able to complete her education
8 and go further with it because she seems to be a young lady who
9 is trying hard to better herself. She gets that obviously from
10 some leadership from you. That's what is so strange about your
11 behavior. But I cannot simply say that you have done nothing,
12 that you ought to be on some kind of probation or something
13 like that. I think the sentence is fair. You may not. I
14 don't expect you to. But that's my reasoning and why I have
15 done this.

16 I wish you luck with rehabilitation. Perhaps when you
17 are in the prison you can get some kind of training where you
18 can come out and have some way to make a living. You can
19 certainly get more education that way. Is there anything
20 further for the record here this morning?

21 MR. HURST: Not from the government, Your Honor.

22 MR. HORAN: Not from the defendant.

23 THE COURT: If not, the court will stand in recess
24 Ms. Sullivan, you need to talk with this lady over here before
25 you leave. She is with the United States Marshal Service and

1 will give you some information.

2 (Hearing Concluded)

CERTIFICATE OF REPORTER

I, CHERIE GALLASPY BOND, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 10th day of March, 2011.

s/ *Cherie G. Bond*
Cherie G. Bond
Court Reporter